



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AT&T CORP., )  
MCI TELECOMMUNICATIONS )  
CORPORATION, )  
ASSOCIATION FOR LOCAL )  
TELECOMMUNICATIONS SERVICES, )  
McLEOD USA TELECOMMUNICATIONS )  
SERVICES, INC., )  
ICG COMMUNICATIONS, INC., )  
GST TELECOM, INC., )  
Plaintiffs, )  
v. )  
U S WEST COMMUNICATIONS, INC., )  
Defendant. )

No. C98-634 WD

APPENDIX SIX

**FILED UNDER SEAL**

**APPENDIX SIX**



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AT&T CORP.,  
MCI TELECOMMUNICATIONS  
CORPORATION,  
ASSOCIATION FOR LOCAL  
TELECOMMUNICATIONS SERVICES,  
McLEOD USA TELECOMMUNICATIONS  
SERVICES, INC.,  
ICG COMMUNICATIONS, INC.,  
GST TELECOM, INC.,  
  
Plaintiffs,  
  
v.  
  
U S WEST COMMUNICATIONS, INC.,  
  
Defendant.

No. C98-634 WD  
APPENDIX SEVEN  
  
**FILED UNDER SEAL**

**APPENDIX SEVEN**



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The Honorable William L. Dwyer

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AT&T CORP.,  
MCI TELECOMMUNICATIONS  
CORPORATION,  
ASSOCIATION FOR LOCAL  
TELECOMMUNICATIONS SERVICES,  
McLEOD USA TELECOMMUNICATIONS  
SERVICES, INC.,  
ICG COMMUNICATIONS, INC.,  
GST TELECOM, INC.,  
  
Plaintiffs,  
  
v.  
  
U S WEST COMMUNICATIONS, INC.,  
  
Defendant.

No. C98-634 WD  
APPENDIX EIGHT  
FILED UNDER SEAL

APPENDIX EIGHT



The Honorable William L. Dwyer

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AT&T CORP.,

MCI TELECOMMUNICATIONS  
CORPORATION,

ASSOCIATION FOR LOCAL  
TELECOMMUNICATIONS SERVICES,

McLEOD USA TELECOMMUNICATIONS  
SERVICES, INC.,

ICG COMMUNICATIONS, INC.,

GST TELECOM, INC.,

Plaintiffs,

v.

U S WEST COMMUNICATIONS, INC.,

Defendant.

No. C98-634 WD

APPENDIX NINE

**FILED UNDER SEAL**

**APPENDIX NINE**





IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AT&T CORP.,

MCI TELECOMMUNICATIONS  
CORPORATION,

ASSOCIATION FOR LOCAL  
TELECOMMUNICATIONS SERVICES,

McLEOD USA TELECOMMUNICATIONS  
SERVICES, INC.,

ICG COMMUNICATIONS, INC.,

GST TELECOM, INC.,

Plaintiffs,

v.

U S WEST COMMUNICATIONS, INC.,

Defendant.

No. C98-634 WD

APPENDIX TEN

**FILED UNDER SEAL**

**APPENDIX TEN**



[ Text Version | WordPerfect Version ]



# NEWS

Federal Communications Commission  
1919 - M Street, N.W.  
Washington, D.C. 20554

News media information 202 / 418-0500  
Fax-On-Demand 202 / 418-2830  
Internet: <http://www.fcc.gov>  
<ftp.fcc.gov>

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

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May 21, 1998

## STATEMENT OF FCC CHAIRMAN WILLIAM KENNARD ON U S WEST/AMERITECH/QUEST AGREEMENT

There has been much attention in the press recently concerning arrangements by which U S WEST and Ameritech have agreed to market within their territories the long distance services of Qwest Communications Corporation. Commission staff are in the process of reviewing these arrangements. In order to help us in our review, I have asked the Chief of the Common Carrier Bureau and the General Counsel to request that U S WEST, Ameritech and Qwest submit to the Commission all contracts governing the terms and conditions of these arrangements, as well as any future modifications or amendments to those contracts.

There have been suggestions that prior Commission precedents clearly address these specific types of arrangements. I do not believe that is the case. The Commission has not had occasion to evaluate these precise arrangements. The Commission will continue to review these arrangements to determine whether they are consistent with the Telecommunications Act and Commission precedent.

- FCC -



The Honorable William L. Dwyer

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AT&T CORP.,

MCI TELECOMMUNICATIONS  
CORPORATION,

ASSOCIATION FOR LOCAL  
TELECOMMUNICATIONS SERVICES,

McLEOD USA TELECOMMUNICATIONS  
SERVICES, INC.,

ICG COMMUNICATIONS, INC.,

GST TELECOM, INC.,

Plaintiffs,

v.

U S WEST COMMUNICATIONS, INC.,

Defendant.

No. C98-634 WD

APPENDIX TWELVE

**FILED UNDER SEAL**

**APPENDIX TWELVE**

# **ATTACHMENT 3**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

AT&T CORP., )  
)  
MCI TELECOMMUNICATIONS )  
CORPORATION, )  
)  
ASSOCIATION FOR LOCAL TELE- )  
COMMUNICATIONS SERVICES, )  
)  
MCLEODUSA TELECOMMUNICATIONS )  
SERVICES, INC., )  
)  
FOCAL COMMUNICATIONS CORP. )  
)  
KMC TELECOM II, INC. )  
)  
NEXTLINK COMMUNICATIONS INC. )  
)  
PLAINTIFFS )  
)  
vs. )  
)  
AMERITECH CORPORATION )  
)  
DEFENDANT )

No. 3 C 2993

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION

Plaintiff AT&T Corp. ("AT&T")<sup>1</sup> respectfully submits this Memorandum of Points and Authorities in Support of AT&T's Motion for Temporary Restraining Order and Preliminary Injunction.

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<sup>1</sup> MCI Telecommunications Corp. ("MCI"), the Association for Local Telecommunications Services ("ALTS"), McLeodUSA Telecommunications Services, Inc. ("McLeod"), Focal Communications Corp. ("Focal"), KMC Telecom II, Inc. ("KMC"), and NEXTLINK Communications, Inc. ("Nextlink").



## INTRODUCTION AND BACKGROUND

Defendant Ameritech Corporation ("Ameritech") is a Bell Operating Company that has a monopoly over local telephone service in major portions of five States. On Thursday of this week, it began implementing an alliance with Qwest Communications International, Inc. ("Qwest"), under which Ameritech will endorse and market Qwest's long distance service to its monopoly customer base as part of a combined package with Ameritech's monopoly local service. In return, Qwest will make a payment to Ameritech of an undisclosed amount for each customer Ameritech signs up for this package.

This arrangement is patently forbidden by two provisions of the Communications Act that were enacted by Congress in 1996 in order to codify the core of the antitrust decree that broke up the former Bell System ("Modification of Final Judgment" or "MFJ"). These provisions (1) prohibit Ameritech and other BOCs from "providing" long distance service while they have local monopolies, and (2) require Ameritech and other BOCs to provide "equal access" to all long distance carriers and prohibit preferential treatment of any carrier. Numerous judicial decisions squarely establish that the marketing of another carrier's long distance service both constitutes the unlawful "provision" of long distance service by the BOC and a violation of the separate equal access and nondiscrimination requirements. Indeed, the provisions enacted by

the Telecommunications Act of 1996 ("1996 Act") are explicit that the BOCs will be permitted to enter the long distance market only after first demonstrating that they have implemented a 14-point "competitive checklist" designed to open their monopoly local markets to competition and have satisfied other statutory requirements. See 47 U.S.C. § 271.

If permitted to proceed, this arrangement will cause substantial and irreparable harm to long distance carriers (like AT&T and MCI), to carriers seeking to enter the local market (like McLeod, Focal, KMC and NEXTLINK), and to the public interest as defined in the 1996 Act. The basis for the 1996 Act, as with the antitrust decree that preceded it, is that a BOC that is permitted to provide long distance service while its local monopoly remains intact will "ineluctably leverage" that monopoly to give immense, artificial advantages to the long distance carriers in which the BOC has a direct financial interest. United States v. Western Electric Co., 969 F.2d 1231, 1238 (D.C. Cir. 1992).

Qwest's own predictions vividly illustrate the point. Although Qwest has been able to attract only a minute fraction of the long distance market when it competes on a level playing field, Qwest has projected that it will obtain more than \$100-\$200 million in additional revenue in a single year as a result of its alliance with Ameritech.<sup>2</sup> And in discussing a similar marketing alliance

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<sup>2</sup> Dow Jones News Service (May 14, 1998) (statement of Qwest (continued...))

with another BOC, U S WEST,<sup>3</sup> Qwest's President has stated that through a marketing alliance with a BOC, it could eventually attract between 25 percent and 35 percent of customers in the BOC's region. Affidavit of John A. McMaster ("McMaster Aff.") ¶ 26 (attached hereto as Exh. 1). Qwest's prediction of dramatic market share shifts are already proving true: In the first three days of the U S WEST/Qwest alliance, U S WEST has signed up over 40,000 customers for Qwest. McMaster Aff., ¶ 26. There is every reason for Qwest to anticipate similar market share gain through its alliance with Ameritech: As Qwest's President emphasized in comparing the Ameritech alliance to the U S WEST alliance, "As I understand it, Ameritech is a much larger company" and Qwest would therefore expect a "proportionate response" from the new agreement.<sup>4</sup>

These massive projected shifts will result not from any innovative new service, technological breakthrough, superior

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<sup>2</sup> (...continued)  
President Joseph P. Nacchio).

<sup>3</sup> Just last week, Qwest entered into a similar alliance, called the "Buyer's Advantage Program," with U S WEST Communications, Inc., the BOC that is the monopoly provider of local exchange services in its service territory in 14 states in the western United States. On May 13, 1998, AT&T, MCI Telecommunications Corporation, the Association for Local Telecommunications Services, McLeod USA, ICG Communications, Inc. and GST Telecom, Inc. filed suit against U S WEST in the Western District of Washington, seeking a temporary restraining order, or in the alternative, expedited preliminary injunction, to enjoin U S WEST from engaging in its marketing arrangement with Qwest.

<sup>4</sup> Dow Jones News Service (May 14, 1998) (statement of Qwest President Joseph P. Nacchio).

efficiency, or dramatically lower price on Qwest's part, but merely from the local monopolist's endorsement of its long distance services and its preferential access to Ameritech's distribution channels and monopoly services.

In order to place these issues in context, it is necessary to describe (1) the MFJ and its interexchange restriction and equal access requirements, (2) the 1996 Telecommunications Act that codified those requirements, and (3) the Ameritech/Qwest arrangement that violates those requirements.

#### 1. The MFJ

Ameritech is one of the Bell Operating Companies ("BOCs") that was divested from AT&T under the 1982 antitrust decree ("MFJ") that broke up the former Bell System. United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), aff'd sub. nom, Maryland v. United States, 460 U.S. 1003 (1983). Ameritech serves major portions of five States in the midwestern United States -- including most of the major metropolitan areas -- and it is the monopoly provider of local telephone service in those areas.

Carriers like AT&T and other carriers that provide long distance service (also referred to as "interexchange" service or "interLATA" service) are critically dependent on Ameritech and other local telephone monopolies in two basic respects. First, virtually every long distance call originates and terminates on their local facilities. A call from Chicago to Milwaukee, for

example, travels first over Ameritech's monopoly local network in Chicago, is then transferred by Ameritech to the caller's chosen long distance carrier, and that long distance carrier then transfers the call to Ameritech's monopoly facilities in Milwaukee, where it is in turn transmitted to the party being called. These services that local telephone companies provide to long distance carriers at the originating and terminating ends of a long distance call are called "access services," and BOCs' "access charges" for these services represent nearly 40 percent of the cost of long distance calls. See McMaster Aff. ¶¶ 6-7.

Second, the overwhelming majority of customers will first subscribe to the long distance service of a particular long distance carrier through their local telephone company when they call to order local exchange service. When a customer selects or changes a long distance carrier, the local telephone company must also send software instructions to its switch so that the customer's long distance calls will thereafter be transmitted to the appropriate long distance carrier's network. Long distance carriers are therefore dependent on local telephone companies like Ameritech neutrally to inform the customer of his or her long distance options and to receive and process the customer's selection accurately. Id. ¶ 8.

By contrast, if a BOC had a direct financial stake in one long distance carrier, every contact with customers that wish to order local service (or that have any question about their service) would

enable the BOC to recommend, urge, or even pressure customers to subscribe to the long distance service in which the BOC has an interest.

Until the implementation of the MFJ, the BOCs themselves provided long distance services both directly and through their contractual relationship with AT&T's Long Lines Division. The combined Bell System had a monopoly not only over local services but also over the long distance services because the Bell System's long distance operations had more favorable access to the BOCs' monopoly facilities (and information about them) than any other firm could obtain. That enabled the BOCs and AT&T to provide higher quality long distance service at lower cost than any potential rival, and to exploit unparalleled information about, and marketing channels to, the BOCs' captive local customers. McMaster Aff. ¶ 12-13.

This discrimination imposed massive, and competitively insurmountable, additional costs upon AT&T's potential competitors such as MCI. In addition to the direct costs imposed by inferior access, the fact that the BOCs had an unmistakable incentive and ability to engage in a range of both obvious and subtle acts of discrimination required potential rivals, as well as the Federal Communications Commission ("FCC") and the Department of Justice, to engage in constant and expensive efforts to monitor the BOCs' conduct and attempt to enforce the laws and regulations against anticompetitive practices. In that regard, at the time of the

United States' antitrust suit, more than 70 private antitrust suits had also been filed against the Bell System. McMaster Aff. ¶¶ 12-13.

In the United States' antitrust suit, the United States submitted evidence that the BOCs had impeded long distance competition by denying the Bell System's long distance competitors access to the essential facilities that they controlled and to information about those facilities at the same terms and price that the Bell System's long distance operation enjoyed. More fundamentally, the United States submitted evidence that the BOCs' simultaneous provision of local and long distance service would be inherently anticompetitive -- and would increase the costs of and irreparably harm competing carriers -- irrespective of whether BOCs ever could be proven actually to have engaged in actual discrimination. In particular, the United States showed that the engineering and operation of local networks were so complex and dynamic, and so dependent on subjective judgments of the persons who manage them, that anticompetitive abuses of local monopolies could never be adequately remedied, much less deterred, by after-the-fact antitrust remedies if a BOC had a direct financial stake in any long distance carrier, and that the combination of a BOC's local monopolies and competitive long distance service would, in all events, cause competitors to incur costs of monitoring BOC behavior that the BOCs' long distance arm would not incur. The United States contended that, to create more certain prospects for

competition in long distance and other related markets, the bottleneck local monopolies of the BOCs must be divested from AT&T, and these divested BOCs must be prohibited from participating in those competitive markets so long as their local exchanges remained monopolies. *McMaster Aff.* ¶¶ 13-16.<sup>5</sup>

This lawsuit was settled in 1982 through entry of the MFJ, which gave the United States the precise relief it sought. *Id.* As the D.C. Circuit has stated, "the premise" of the MFJ was that so long as the BOCs "enjoyed a monopoly on local calls," they "would ineluctably leverage that bottleneck control in the interexchange (long distance) market" and harm interexchange competition and consumers. *See United States v. Western Elec. Co.*, 969 F.2d 1231, 1238 (D.C. Cir. 1992). While the MFJ did not seek to eliminate the BOCs' local monopolies, and therefore could not eliminate their ability to impede competition, it rested on the conclusion that they would have no incentive to use their local monopolies to impede long distance competition if they could not have a financial interest in the success of any particular long distance carrier.

Section II(D)(1) of the MFJ therefore prohibited the divested BOCs and any BOC affiliates from "provid[ing] interexchange telecommunications services." *See United States v. Western Elec.*

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<sup>5</sup> *See United States v. American Tel. & Tel. Co.*, 524 F. Supp. 1336 (D.D.C. 1981); Plaintiff's Memorandum In Opposition to Defendants' Motion For Involuntary Dismissal Under Rule 41(b) (August 16, 1981); *United States v. AT&T*, 552 F. Supp. at 131. 160--65 (D.D.C. 1982).



Co., 552 F. Supp. 131, 227 (D.D.C. 1982). In subsequent decisions under the MFJ, the Court made clear that "the term 'provide' or 'provision' [in the MFJ] was to be synonymous with furnishing, marketing, or selling," United States v. Western Elec. Co., 675 F. Supp. 655, 666 & n.46 (D.D.C. 1987). See also United States v. Western Elec. Co., 627 F. Supp. 1090, 1099-1103 (D.D.C. 1986) (same). Under Section VIII(C) of the MFJ, this interexchange restriction was to remain in effect unless and until a BOC could show that there was no longer even a "substantial possibility" that it "could use its monopoly power to impede competition" in the long distance market. Western Elec., 552 F. Supp. at 231. Under this standard, courts repeatedly refused to authorize BOCs to provide even long distance services that were incidental to other authorized BOC services.

In addition, Sections II(A) and II(B) of the MFJ required the BOCs to provide "equal access" to all long distance carriers and prohibited any favoritism to any one carrier or group of carriers. See id. at 227. These requirements applied to, among other things, any contacts between BOCs and their customers regarding the selection of long distance carriers. See United States v. Western Elec. Co., 578 F. Supp. 668, 676-77 (D.D.C. 1983). Thus, for example, when a new customer called Ameritech to order service, the MFJ required it to provide a list of available long distance carriers in random order, and not to urge the customer to choose